

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2003-018673

02/07/2005

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
D. Raybon  
Deputy

FILED: 02/11/2005

BARRY DAVIS

GEOFFREY M TRACHTENBERG

v.

REBECCA PATTON, et al.

PETER A BOYLE

PATRICIA E NOLAN

MINUTE ENTRY

Plaintiff's Motion for Partial Summary Judgment re: Liability and Sanctions and Defendant's Motion for Sanctions have been under advisement. The Court finds and rules as follows:

It is clear from the arbitration transcript that the term "liability" was used to include all elements of a tort other than damages. Not only is there never any attempt to distinguish anything other than damages from "liability," but the whole of defense counsel's closing argument is devoted to arguing the proof of damages, the propriety of the amounts charged by Plaintiff's doctors and physical therapists. The stipulation made in the course of arbitration, as it was not by its terms limited to the arbitration proceeding, is binding. Ariz.R.Civ.P. 76 (c) applies by its terms only to legal rulings and factual findings made by the arbitrator, not stipulations made by the parties. Plaintiff, relying on the stipulation, did not call any witnesses to establish the other elements of a tort. The Supreme Court has stated, "what constitutes good faith participation is a matter of fairness and common sense." *Lane v. City of Tempe*, 202 Ariz. 306, 309 ¶16 (2002). In this case, fairness and common sense call for enforcement of the stipulation. However, further sanctions are not warranted. Defendant's Motion for Sanction is meritless.

THEREFORE, IT IS ORDERED:

- 1) Granting Plaintiff's Motion for Partial Summary Judgment re: Liability. (The Court's ruling does not prevent either party from calling Dr. John Charochak

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as a witness; nor does it preclude the parties from raising any issues relating to said witness at the time of the Pretrial Management Conference or trial.)

- 2) Denying Plaintiff's Motion for Sanctions.
- 3) Denying Defendant's Separate Motion for Sanctions.